BILL NO. 87

Government Bill

1st Session, 60th General Assembly
Nova Scotia
55 Elizabeth II, 2006

An Act to Amend Chapter 92 of the Revised Statutes, 1989, the Consumer Protection Act

CHAPTER 25
ACTS OF 2006

AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
NOVEMBER 23, 2006

The Honourable Jamie Muir
Minister of Service Nova Scotia and Municipal Relations

Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly

2007-03013/

An Act to Amend Chapter 92 of the Revised Statutes, 1989, the Consumer Protection Act

Be it enacted by the Governor and Assembly as follows:

1 Chapter 92 of the Revised Statutes, 1989, the *Consumer Protection Act*, is amended by adding immediately after Section 12 the following Section:

12A The Registrar may

(a) set terms and conditions for the issuance of a new permit, the maintaining of an existing permit, the re-instatement of a suspended permit or for an applicant who had their permit previously cancelled; and

(b) require the repayment by a lender of any charges made to which the lender was not entitled.

2 Chapter 92 is further amended by adding immediately after Section 18 the following Sections:

18A In this Section and Sections 18B to 18U,

(a) "payday lender" means a person who offers, arranges or provides a payday loan;

(b) "payday loan" means any advancement of money with a principal of one thousand five hundred dollars or less and a term of sixty-two days or less made in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbrokering, a line of credit or a credit card;

(c) "rollover" means the extension or renewal of a loan that imposes additional fees or charges on the borrower, other than interest, or the advancement of a new payday loan to pay out an existing payday loan, or a transaction specified in the regulations.

18B Nothing in Sections 18A to 18U applies to a payday loan made before the coming into force of Sections 18A to 18U, except to the extent that it relates to an extension or renewal made or granted after the coming into force of Sections 18A to 18U.

18C (1) No person shall offer, arrange or provide a payday loan from a location except under the authority of a permit issued to the person for that location.

(2) No payday lender shall offer, arrange or provide a payday loan under the business name or style that differs from the business name or style specified in the lender's permit.

18D (1) A person may apply, in the form approved by the Registrar, for

(a) a permit authorizing the person to offer, arrange or provide payday loans at the location specified in the permit; or

(b) a renewal of a permit.

(2) A person who wishes to offer, arrange or provide payday loans at more than one location must apply for a separate permit for each location.

(3) Before a permit is issued or renewed by the Registrar, the applicant must pay the permit or renewal fee specified in the regulations.

18E (1) Upon receipt of an application in the prescribed form from an applicant who satisfies the requirements of this Act and the regulations and any terms or conditions stipulated by the Registrar, the Registrar shall issue a permit to the applicant.

(2) Unless previously terminated or cancelled, every permit issued pursuant to subsection (1) expires one year from the end of the month in which the permit was issued.

18F (1) A permit issued pursuant to Section 18E is not transferable or assignable.

(2) In the event of a change in ownership of a payday lender, the person acquiring ownership of the payday lender must apply for a new permit.

(3) The Registrar, where the Registrar considers it in the public interest to do so, may impose terms or conditions on a permit at the time of issuing or renewing the permit, or at any other time by written notice to the permit holder.

18G (1) The Registrar may refuse to issue a permit to an applicant if

(a) the applicant has been convicted of

(i) an offence under this Act, or

(ii) an offence under the *Criminal Code* (Canada) or any other Act that, in the opinion of the Registrar, involves a dishonest action or intent;

(b) the applicant is an undischarged bankrupt;

(c) the applicant provides incomplete, false, misleading or inaccurate information in support of the application;

(d) a permit issued to the applicant

(i) under this Act, or

(ii) by an authority responsible for issuing permits with respect to the lending of money in any jurisdiction,

is suspended or has been cancelled, or the applicant has applied for a renewal of such a permit and the renewal has been refused;

(e) the applicant fails to meet any qualification or satisfy any requirement of Sections 18A to 18U or the regulations;

(f) the Registrar has reason to believe that the applicant will not carry on business according to law and with integrity and honesty; or

(g) in the Registrar's opinion, it is not in the public interest to issue a permit to the applicant.

(2) The Registrar may refuse to issue a permit to

(a) a corporation, if a director or officer of the corporation could be refused a permit under subsection (1); or

(b) a partnership, if a member of the partnership could be refused a permit under subsection(1).

(3) The Registrar shall give written reasons for a decision to refuse to issue a permit.

18H (1) Subject to subsection (2), the Registrar may refuse to renew or may cancel or suspend a payday lender's permit

(a) for any reason for which the Registrar may refuse to issue a permit under Section 18G;

(b) if the lender fails to provide information required by the Registrar or the regulations, or provides incomplete, false, misleading or inaccurate information to the Registrar;

(c) if the lender contravenes or fails to comply with this Act or the regulations; or

(d) if the lender contravenes or fails to comply with a condition of the permit.

(2) Before refusing to renew or cancelling or suspending a permit, the Registrar shall notify the payday lender, in writing, that

(a) the Registrar intends to refuse to renew the permit or to cancel or suspend it, the effective date of the Registrar's decision and why; and

(b) the lender may, within fourteen days after being served with the notice,

(i) make a written submission to the Registrar as to why the renewal should not be refused or the permit should not be cancelled or suspended, or

(ii) contact the Registrar to request a hearing before the Registrar.

(3) The Registrar may extend the fourteen-day period referred to in clause (b) of subsection (2).

(4) Where the payday lender does not make a written submission or arrange for and attend a hearing under clause (b) of subsection (2), the Registrar may take the action stated in the notice.

(5) After considering a written submission or holding a hearing, the Registrar may refuse to renew the permit or may cancel or suspend the permit.

(6) A decision to cancel or suspend a payday lender's permit made pursuant to subsection (5) takes effect when notice of the decision is served on the lender, or on the date specified in the decision, whichever is later.

(7) The Registrar shall give written reasons for a decision to refuse to renew or to cancel or suspend a permit.

18I A payday lender shall provide, in writing and in plain language, the following information to a borrower:

(a) the total amount borrowed expressed as one sum in dollars and cents, that is comprised of

(i) the sum actually received by the borrower, and

(ii) the sum of official fees and premiums for insurance paid by the borrower;

(b) the cost of borrowing expressed in dollars and cents and itemized into interest and any other charges;

(c) the interest payable as a percentage rate;

(d) the cost of borrowing as a percentage of the total amount borrowed expressed at an annual rate; and

(e) the total amount to be repaid;

(f) the regulated maximum rates or fees for the cost of borrowing or any other charges applying to payday loans as determined by the Nova Scotia Utility and Review Board;

(g) charges payable in the event the loan is not repaid by the due date and the allowable maximum charges as determined by the Nova Scotia Utility and Review Board;

(h) how a loan may be cancelled;

(i) the borrower's rights if the lender charges amounts prohibited under Section 18J;

(j) the amount of fees and charges that can be applied to any extension or renewal as determined by the Nova Scotia Utility and Review Board;

(k) a copy of the loan agreement;

(l) a copy of a document signed by the borrower stating that the borrower has received the information set out in this Section; and

(m) such other information as prescribed in the regulations.

18J A payday lender shall not charge

(a) any fee, rate or other charge in excess of the maximum fees, rates or charges determined by the Nova Scotia Utility and Review Board;

(b) any fee, charge or penalty that is not provided for in this Act or the regulations;

(c) any amount in excess of that disclosed in writing to the borrower;

(d) a fee for cancellation of a payday loan; and

(e) any amount not disclosed in writing to the borrower.

18K Where a payday loan is not fully repaid on the due date set out in the payday loan, the borrower and the lender may negotiate an extension or renewal of the payday loan.

18L Any procedures used by a payday lender to collect monies due under a payday loan are subject to this Act and the *Consumer Creditors' Conduct Act*.

18M A payday lender shall issue receipts for the repayment of a payday loan and must retain such receipts in the manner prescribed in the regulations.

18N A payday lender shall not

(a) require security for a payday loan;

(b) require undated cheques or require post-dated cheques for any amount exceeding the amount to repay the payday loan by the due date including interest and fees;

(c) issue a new payday loan to a borrower who already has a loan with the lender;

(d) discount the principal amount of the loan by deducting or withholding from the initial advance an amount representing any portion of the cost of borrowing;

(e) issue a loan in excess of a portion of the borrower's net pay as prescribed;

(f) where a loan agreement makes provision for instalment payments, require an instalment payment to be in excess of a portion of the borrower's net pay as prescribed;

(g) charge a penalty or fee for the early repayment of a loan; or

(h) grant rollovers.

18O A payday lender shall display, in the manner prescribed by the regulations, at the location at which a payday loan is arranged or provided rates and fees for payday loans.

18P (1) The borrower is not liable to pay the lender any amount the lender is prohibited from charging under Section 18J

(2) Where the borrower has paid an amount referred to in subsection (1), the borrower is entitled to a refund of all monies paid in excess of the total amount borrowed.

(3) In the event that the loan agreement requires the borrower to pay an amount referred to in subsection (1), the borrower is responsible to repay only the total amount borrowed.

(4) Where the borrower is entitled to a refund under subsection (2), the lender shall provide the refund immediately upon demand by the borrower or by the Registrar.

18Q (1) A borrower may cancel a payday loan anytime prior to the end of the business day following the date of receipt of the initial advance or cash card or other device enabling the borrower to access the funds, or such longer period as prescribed in the regulations.

(2) A borrower may cancel a payday loan at any time if the payday lender

(a) did not advise the borrower of the borrower's right pursuant to subsection (1); or

(b) failed to provide the borrower with the information required to be provided to the borrower under Section 18I.

18R (1) A borrower shall cancel a payday loan by

(a) giving written notice of the cancellation to the payday lender; and

(b) repaying, by cash, certified cheque or money order or in another prescribed manner, the outstanding balance of the total amount borrowed.

(2) For the purpose of clause (b) of subsection (1),

(a) where the initial advance was made in the form of a cheque, a return of the unnegotiated cheque to the payday lender is to be considered a repayment of the initial advance; and

(b) where the initial advance was made in the form of a cash card or other device that enabled the borrower to access funds under the loan, returning that card or device to the payday lender is to be considered a repayment of the initial advance to the extent of the cash or credit balance remaining on the card or device.

(3) Upon the cancellation of a payday loan under this Section, the payday lender must immediately give the borrower a receipt for what the borrower paid or returned to the payday lender upon cancelling the loan.

(4) The cancellation of a payday loan under this Section extinguishes every liability and obligation of the borrower under, or related to, the payday loan agreement.

(5) Notwithstanding subsection (4), in the event that the borrower purchased loan insurance paid by the lender at the request of the borrower, the borrower is responsible for the pro-rated amount of the insurance premium.

18S A payday lender shall retain the documents prescribed in the regulations for the period of time prescribed in the regulations.

18T (1) In this Section, "Board" means the Nova Scotia Utility and Review Board.

(2) The Board shall, by order,

(a) fix the maximum cost of borrowing, or establish a rate, formula or tariff for determining the maximum cost of borrowing, that may be charged, required or accepted in respect of a payday loan;

(b) fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of the extension or renewal of a payday loan; and

(c) fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of any fee, charge or penalty that is provided for in the regulations.

(3) The Board may, by order, fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of any component of the cost of borrowing of a payday loan.

(4) When making an order under this Section, the Board may consider

(a) the operating expenses and revenue requirements of payday lenders in relation to their payday lending business;

(b) the terms and conditions of payday loans;

(c) the circumstances of, and credit options available to, payday loan borrowers generally, and the financial risks taken by payday lenders;

(d) the regulation of payday lenders and payday loans in other jurisdictions;

(e) any other factor that the Board considers relevant and in the public interest; and

(f) any data that the Board considers relevant.

(5) An order made under this Section must be one that the Board considers just and reasonable in the circumstances, having regard to the factors and data considered by the Board.

(6) The Board shall review its existing orders under this Section at least once every three years and, after the review, the Board shall make a new order that replaces the existing orders.

(7) Whenever the Board is satisfied that circumstances in the payday lending industry have changed substantially, or that new evidence has come to its attention that may affect an existing order made under subsection (2) or (3), the Board may review any existing order and, after the review, the Board shall make a new order that continues, modifies or replaces the order that was reviewed.

(8) Before making an order under this Section, the Board shall notify the Registrar and give public notice and hold a public hearing in respect of the subject matter of the order.

(9) As soon as practicable after the Board makes an order under this Section, the Registrar shall give written notice of the order to every payday lender who holds a permit or whose application for a permit is under consideration by the Registrar.

(10) The Board may make recommendations to the Minister on matters in respect of payday loans and payday lenders.

(11) The *Utility and Review Board Act* applies *mutatis mutandis* to a proceeding by the Board under this Section.

18U (1) The Governor in Council may make regulations

(a) respecting application procedures for a permit;

(b) respecting payday lender permit fees;

(c) respecting the authority of the Registrar under Sections 18A to 18U;

(d) respecting terms and conditions of a permit;

(e) respecting forms;

(f) respecting procedures for appeals;

(g) respecting the maximum portion of the borrower's net pay to be loaned by a payday lender;

(h) respecting the minimum term of a payday loan;

(i) respecting the maximum portion of the borrower's net pay allowed to be charged if the loan agreement makes provision for instalment payments;

(j) respecting the types of fees, charges, rates and penalties allowed to be charged with respect to a payday loan;

(k) respecting the display of fees, charges, rates and products offered;

(l) prohibiting certain practices with respect to payday loans;

(m) respecting information to be disclosed to borrowers;

(n) respecting payday loan renewal and extension practices;

(o) respecting the cancellation of a payday loan;

(p) respecting records to be maintained;

(q) respecting other types of payday loans;

(r) respecting emerging business practices;

(s) defining any word or expression used but not defined in Sections 18A to 18U;

(t) deemed necessary or advisable by the Governor in Council to carry out effectively the intent and purpose of Sections 18A to 18U.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

3 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.